REMARKS

Reconsideration and withdrawal of the rejections and objections of the application are respectfully requested in view of the amendments and remarks herewith, which place the application into condition for allowance.

I. STATUS OF CLAIMS AND FORMAL MATTERS

Claims 1-13 are pending. Claims 1-5, 8 and 12 are amended, without prejudice.

No new matter is added by these amendments.

It is submitted that these claims are patentably distinct from the prior art cited by the Examiner, and that these claims are in full compliance with the requirements of 35 U.S.C. §112. The amendments and remarks herein are not made for the purpose of patentability within the meaning of 35 U.S.C. §§ 101, 102, 103 or 112; but rather the amendments and remarks are made simply for clarification and to round out the scope of protection to which Applicants are entitled. Support for the amended recitations in the claims is found throughout the specification.

II. OBJECTIONS TO THE CLAIMS

Claims 2 and 4 were objected to for an alleged double recitation of an element. The amendments to the claims render the objection moot.

Consequently, reconsideration and withdrawal of the objections to the claims are respectfully requested.

III. 35 U.S.C. §112, SECOND PARAGRAPH, REJECTIONS

Claims 3 and 4 were rejected under 35 U.S.C. §112, second paragraph, for allegedly being indefinite. The amendments to the claims render the rejection moot.

Consequently, reconsideration and withdrawal of the Section 112, second paragraph, rejections are respectfully requested.

IV. 35 U.S.C. §§ 102/103 REJECTIONS

Claims 1 and 2 were rejected under 35 U.S.C. §102(b) as allegedly being anticipated by U.S. Patent No. 3,779,196 to Knaus, et al. ("Knaus"); and claims 3 and 4 are rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Knaus in view of U.S. Patent No. 2,391,926 to Scott ("Scott"). The rejections are traversed. The rejections will be collectively addressed and respectfully traversed. The cited documents, either alone or in combination fail to disclose, teach, suggest, enable, or provide the motivation for a skilled artisan to practice the instantly claimed invention.

The instant invention is directed to a flexible fluid containment vessel for the transportation and/or containment of cargo comprising a fluid or fluidisable material, said vessel comprising, *inter alia,* a means for rendering the tubular structure buoyant comprising forming the fabric having at least one thermoplastic or thermoset coating that renders the fabric buoyant. Such an invention is neither disclosed, taught, enabled nor suggested in the cited documents.

More specifically, Knaus, either alone or in combination, fails to disclose, *inter alia*, a fabric having at least one thermoplastic or thermoset coating that renders the fabric buoyant. Rather, Knaus provides that "[a] series of buoyant pads 18 are positioned along the top of the container 1 on the inner surface of the container wall . . . The pads 18 provide a neutral buoyancy that causes the container 1 to float on the water when empty while it is being deployed." (Col. 2,

lines 50-52 and 58-60). Specifically, as seen in figure 1, buoyant pads 18 are not a coating as claimed in the present invention. Moreover, the coating of the present invention may render the flexible fluid containment vessel buoyant, particularly when empty, without the need for buoyancy devices, such as provided in Knaus.

Because Knaus does not disclose each and every element of claim 1 and its dependent claims, the 102 rejections based on Knaus cannot stand.

Claims 3 and 4 were rejected under 35 U.S.C. §103 as allegedly being rendered obvious by Knaus in combination with Scott. Scott does not remedy the inherent deficiencies in Knaus. Scott does not suggest, disclose or enable the instantly claimed invention. Scott relates to non-propelling flexible barges. In no part of this document is there a teaching or motivational recitation of a fabric having a coating that renders the fabric buoyant. Moreover, Scott provides that a sufficient amount of air may be injected into the cargo hold, which is airtight, or into separate airtight chambers to attain the necessary degree of buoyancy. (Col. 1, lines 15-22). Therefore, the cited documents, either alone or in combination, fail to teach, suggest, enable, or provide the motivation for a skilled artisan to practice the instantly claimed invention.

It is well-settled that picking and choosing portions from disparate references in order to formulate an obviousness rejection is impermissible. Further, "obvious to try" is not the standard upon which an obviousness rejection should be based. *See In re Fine*. And as "obvious to try" would be the only standard that would lend the Section 103 rejection any viability, the rejection must fail as a matter of law.

In order to ground an obviousness rejection, there must be some teaching which would have provided the necessary incentive or motivation for modifying the reference's teaching. *In re Laskowski*, 12 U.S.P.Q. 2d 1397, 1399 (Fed. Cir. 1989); *In re Obukowitz*, 27 U.S.P.Q. 2d

1063 (B.P.A.I. 1993). And as stated by the Court in *In re Fritch*, 23 U.S.P.Q. 2d 1780, 1783-1784 (Fed. Cir. 1992): "The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggests the desirability of the modification." Also, the Examiner is respectfully reminded that for the Section 103 rejection to be proper, both the suggestion of the claimed invention and the expectation of success must be founded in the prior art, and not Applicants' disclosure. *In re Dow*, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988).

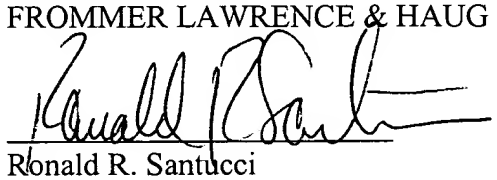
Against this background, the cited documents fail to teach, suggest or disclose the instantly claimed invention.

Consequently, reconsideration and withdrawal of the §§ 102 and 103 rejections are believed to be in order and such actions are respectfully requested.

CONCLUSION

Favorable reconsideration of the application, withdrawal of the rejections and objections, and prompt issuance of the Notice of Allowance are, therefore, all earnestly solicited.

Respectfully submitted,
FROMMER LAWRENCE & HAUG LLP

By: 

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